

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AUTO-MARINE ENGINEERS, INC.

Claim No. CU-0924

Decision No. CU -258

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by AUTO-MARINE ENGINEERS, INC. in the amount of \$32,566.20 based upon the asserted loss of payment for merchandise shipped to Cuba, and a bank account.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba

and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in Florida and that all times between 1947 and presentation of this claim on December 30, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Both of the claimant's stockholders are United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has submitted documentation in support of its asserted loss as follows.

Bank account	\$11,554.05
Sale and delivery of merchandise to:	
Cuban Government agencies	5,790.66
Cuban enterprises	15,221.49

Claimant states it has not recovered any of the funds.

In support of the claim for a bank account, the claimant has submitted a statement of The Trust Company of Cuba, reflecting an account balance of \$11,554.05, in the names of the principal stockholders who aver that it was a corporate account.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affected the subject account. However, a chronological resume is of historical interest. Matters pertaining to safety deposit boxes and their contents are not included in this resume.

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Law 568, published in the Cuban Official Gazette on September 29, 1959 forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country. The records of this Commission include a letter of the nationalized First National Bank of New York, under date of November 4, 1960, informing a United States resident that accounts in local banks, of individuals residing abroad, were blocked by said Law 568.

By Cuban Resolution 2, published in the Cuban Official Gazette on September 17, 1960 pursuant to Cuban Law 851, the Government of Cuba specifically took over the Chase Manhattan Bank of New York, the First National Bank of New York and the First National Bank of Boston. This action did not nullify the debts of the banks, which included deposit accounts.

Law 891, published in the Cuban Official Gazette on October 13, 1960, made banking a public function and took all other banks, specifically excepting the Royal Bank of Canada and the Bank of Nova Scotia. This action did not in itself nullify debts to depositors, although some accounts, as of companies, may have been taken by other nationalization of such entities. It appears that the Royal Bank of Canada and the Bank of Nova Scotia were sold to the Cuban Government.

Law 930, published in the Cuban Official Gazette on February 23, 1961 gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence.

By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some exceptions as for example, persons in need could draw 2,000 of 20,000 and companies could draw 5,000 of 10,000 pesos.

However, Laws 963 and 964 do not affect Claim No. CU-0924, in which the account did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Law 963 and 964, supra. In the absence of evidence to the contrary, the Commission finds that claimant's above described bank account, totalling 11,554.05 pesos, was taken by the Government of Cuba on December 6, 1961.

Further, the Commission finds that on December 6, 1961, claimant's 11,554.05 pesos had a value of \$11,554.05 and that it suffered a loss in that amount, within the scope of Title V of the Act when its bank account was taken by the Government of Cuba. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

The record also contains copies of invoices and related documents reflecting sales to two Cuban Government agencies and ten Cuban enterprises, as to which freight and other fees increased the debts to the totals shown below. The terms of sale on the transactions was 30 days.

CONSIGNEE	AMOUNT	DATE DUE
Marina de Guerra Revolucionaria, Depto de Administracion	\$2,468.33	December 24, 1959
Marina de Guerra de Cuba		
June 30, 1958	29.90	July 30, 1958
August 15, 1958	\$72.97	
Credit	<u>64.16</u>	
October 15, 1958	8.81	September 15, 1958
	14.00	November 15, 1958

November 21, 1958	\$, 45.80	December 21, 1958
December 3, 1958	83.26	January 3, 1959
December 16, 1958	1,464.30	January 16, 1959
December 18, 1958	275.00	January 18, 1959
December 23, 1958	1,289.86	January 23, 1959
December 29, 1958	111.40	January 29, 1959
	<u>\$5,790.66</u>	

Inasmuch as the above described debts of the Government of Cuba have not been paid, the Commission finds that claimant suffered a loss in the amount of \$5,790.66 within the scope of Title V of the Act (See Claim of Clemens R. Maise, Claim No. CU-3191) on the following dates:

January 1, 1959	as to	\$5,98.51
January 3, 1959	as to	83.26
January 16, 1959	as to	1,464.30
January 18, 1959	as to	275.00
January 23, 1959	as to	1,289.86
January 29, 1959	as to	111.40
December 24, 1959	as to	<u>2,468.33</u>
		<u>\$5,790.66</u>

Following is the pertinent data as to the unpaid debts of ten Cuban enterprises:

CONSIGNEE	AMOUNT	DATE DUE
M/V Veramar	\$ 377.89	June 5, 1959
A. Carbonell	395.48	January 22, 1959
Cia. General de Construcciones Publicas Various dated in 1957	2,724.16	
Regla Mar Lines, S.A.		
September 22, 1960:	\$52.23	
Credit	<u>26.44</u>	25.79
November 10, 1960:	\$43.46	October 22, 1960
Credit	<u>10.65</u>	
November 22, 1960	40.00	December 10, 1960
January 25, 1961	90.35	December 22, 1960
March 1, 1961	392.89	February 25, 1961
April 29, 1961:	\$75.90	April 1, 1961
Credit	<u>34.84</u>	
May 5, 1961	42.80	May 29, 1961
August 5, 1961	141.20	June 5, 1961
October 3, 1961	174.20	September 5, 1961
November 13, 1961	116.35	November 3, 1961
April 27, 1962	842.40	December 13, 1961
May 3, 1962	239.73	May 27, 1962
May 16, 1962	<u>160.00</u>	June 3, 1962
		June 16, 1962
(Regla Mar Total	<u>\$2,339.58)</u>	

Jose Arechabala, S.A.			
January 23, 1959		\$1, 10.74	February 23, 1959
April 30, 1959:	\$22.20		
Credit	<u>18.03</u>	4.17	May 30, 1959
December 28, 1959		158.13	January 28, 1960
May 10, 1960		268.94	June 10, 1960
December 31, 1960		<u>2,758.90</u>	January 31, 1961
(Arechabala Total		\$3,200.88)	

A. Gomez del Campo			
July 18, 1958:	\$1,659.12		
Credit	<u>1,000.00</u>	\$ 659.12	August 18, 1958
March 5, 1959		28.49	April 5, 1959
June 11, 1959:	\$210.85		
Credit	<u>80.00</u>	130.85	July 11, 1959
December 30, 1959		<u>20.00</u>	January 30, 1960
(Gomez del Campo Total		\$ 838.46)	

Cia. Cubana de Pesca, S.A.			
December 15, 1959		\$ 640.05	January 15, 1960

Cia de Fomentos Maritimos, S.A.			
January 16, 1959	\$ 89.60		
February 28, 1959:	<u>628.65</u>		
	<u>\$718.25</u>		
Credit	<u>712.76</u>	\$ 5.49	March 28, 1959
March 9, 1959		65.99	April 9, 1959
September 23, 1959:	\$1,066.54		
Credit	<u>800.00</u>	266.54	October 23, 1959
October 14, 1959		150.00	November 14, 1959
November 11, 1959		27.50	December 11, 1959
December 17, 1959		<u>3.30</u>	January 17, 1960
(Fomentos Total		\$ 518.82)	

Manola Diaz Losada			
April 2, 1958		\$ 21.81	May 2, 1958
August 13, 1958		6.96	September 13, 1958
October 1958		97.77	November 1958
December 1958:	\$1,653.26		
Credit	<u>1,500.00</u>	153.26	January 1959
February 5, 1959		4.36	March 5, 1959
March 26, 1959		<u>110.00</u>	April 26, 1959
(Losada Total		\$ 394.16)	

Motores y Repuestos Diesel, S.A.			
November 29, 1957		\$1,566.05	December 29, 1957
April 1959:	\$420.19		
Credit	<u>16.32</u>	403.87	May 1959
May 21, 1959		60.00	June 21, 1959
June 1959:	\$2,131.27		
Credit	<u>604.90</u>	1,526.37	July 1959
August 10, 1959		43.72	September 10, 1959
September 30, 1959		<u>192.00</u>	October 30, 1959
(Motores Total		\$3,792.01)	

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively

precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the dates below: the date September 29, 1959, the date of Cuban Law 568 being used for all debts incurred prior to that date; and the remaining dates being the due dates, 30 days after invoice as heretofore stated:

<u>Interest Date</u>	<u>Amount</u>
September 29, 1959	\$ 8,396.55
October 23, 1959	266.54
October 30, 1959	192.00
November 14, 1959	150.00
December 11, 1959	27.50
January 15, 1960	640.05
January 17, 1960	3.30
January 29, 1960	158.13
January 30, 1960	20.00
June 10, 1960	268.94
October 22, 1960	25.79
December 10, 1960	32.81
December 22, 1960	40.00
January 31, 1961	2,758.90
February 25, 1961	90.35
April 1, 1961	392.89
May 29, 1961	41.06
June 5, 1961	42.80
September 5, 1961	141.20
November 3, 1961	174.20
December 13, 1961	116.35
May 27, 1962	842.40
June 3, 1962	239.73
June 16, 1962	160.00
Total	\$15,221.49

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that AUTO-MARINE ENGINEERS, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount Thirty-Two Thousand Five Hundred Sixty-Six Dollars and Twenty Cents (\$32,566.20) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

MAY 22 1968

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 7-1-68

Frank M. ...
NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.